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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 RAUL URIARTE-LIMON,

13 Plaintiff,

14 vs.

15
16 ONTARIO PHARMACY, INC., a
17 California corporation; TYLER G.
18 FREW, an individual; and DOES 1-10,
19 Defendants.

Case No.:

COMPLAINT FOR:

DENIAL OF CIVIL RIGHTS AND
ACCESS TO PUBLIC FACILITIES
TO PHYSICALLY DISABLED
PERSONS IN VIOLATION OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, (42 U.S.C. §12101, *et*
seq.) AND THE UNRUH CIVIL
RIGHTS ACT, (CALIFORNIA CIVIL
CODE §51, *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff RAUL URIARTE-LIMON (hereinafter referred to as “Plaintiff”)
2 complains of ONTARIO PHARMACY, INC., a California corporation; TYLER
3 G. FREW, an individual; and DOES 1-10, (each, individually a “Defendant” and
4 collectively “Defendants”) and alleges as follows:

5 I. PARTIES

6 1. Plaintiff RAUL URIARTE-LIMON is a California resident and a
7 qualified physically disabled person. He cannot walk due to paraplegia and uses a
8 wheelchair for mobility. Plaintiff prides himself on his independence and on
9 empowering other disabled persons to be independent.

10 2. Defendants ONTARIO PHARMACY, INC. and TYLER G. FREW
11 are and were the owners, operators, lessors and/or lessees of the subject business,
12 property, and facility at all times relevant in this Complaint.

13 3. Plaintiff does not know the true names of Defendants, their business
14 capacities, their ownership connection to the property and business, or their
15 relative responsibilities in causing the access violations herein complained of, and
16 alleges a joint venture and common enterprise by all such Defendants. Plaintiff is
17 informed and believes that each of the Defendants herein, including DOES 1
18 through 10, inclusive, is responsible in some capacity for the events herein alleged,
19 or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to
20 amend when the true names, capacities, connections, and responsibilities of the
21 Defendants and Does 1 through 10, inclusive, are ascertained.

22 4. Defendants own and owned the property located at 666 East E ST,
23 Ontario, CA 91764 (“Subject Property”) at all relevant times.

24 5. Defendants operate and operated a pharmacy doing business as
25 Ontario Pharmacy (“pharmacy”), located at the Subject Property, at all relevant
26 times.

27 6. Plaintiff alleges that the Defendants have been and are the owners,
28 franchisees, lessees, general partners, limited partners, agents, trustees, employees,

1 subsidiaries, partner companies and/or joint ventures of each of the other
2 Defendants, and performed all acts and omissions stated herein within the course
3 and scope of such relationships causing the damages complained of herein.

4 **II. JURISDICTION AND VENUE**

5 7. This Court has subject matter jurisdiction over this action pursuant to
6 28 U.S.C. §1331 and §1343(a)(3) and (a)(4) for violations of the Americans with
7 Disabilities Act of 1990, U.S.C. §12101, *et seq.*

8 8. Pursuant to supplemental jurisdiction, an attendant and related cause
9 of action, arising out of the same nucleus of operative facts and arising out of the
10 same transactions, is also brought under California's Unruh Civil Rights Act,
11 which expressly incorporates the Americans with Disabilities Act.

12 9. Venue is proper in this court pursuant to 28 U.S.C. U.S.C. §1391(b)
13 and is founded on the fact that the real property which is the subject of this action
14 is located in this district and that Plaintiff's causes of action arose in this district.

15 **III. FACTS**

16 10. Plaintiff uses a wheelchair for mobility.

17 11. Defendants' business is open to the public, a place of public
18 accommodation, and a business establishment.

19 12. Plaintiff went to the pharmacy on July 12, 2023 and purchased one or
20 more items. The receipt he received for his purchase is shown in the photo below.

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13. Unfortunately, during Plaintiff's visit to the pharmacy, Defendants did not offer persons with disabilities equivalent facilities, privileges, advantages, and accommodations offered to other persons.

14. Plaintiff encountered barriers that interfered with and denied Plaintiff the ability to use and enjoy the goods, services, privileges, advantages, and accommodations offered by Defendants at the Subject Property.

15. These barriers violate one or more standards of the Americans with Disabilities Act ("2010 ADA Standards") and/or the California Building Codes ("2022 CBC").

16. Parking for patrons visiting the Subject Property is among the facilities, privileges advantages, and accommodations offered by Defendants.

1 17. When parking is provided, there must be at least one accessible
2 parking space designated and marked for disabled persons. 2010 ADA Standards
3 §502 et seq.; 2022 CBC 11B-502 et seq.

4 18. However, there is no accessible parking for disabled persons and/or
5 the parking spaces designated for disabled persons do not comply with the
6 applicable standards.

7 19. There is no ADA compliant parking. ADA 2010 §502 et seq.; 2022
8 CBC 11B 502 et seq.

9 20. There is no ADA compliant parking signage. ADA 2010 §502.6; 2022
10 CBC 11B-502.6.

11 21. The paint used for the designated accessible parking space was badly
12 faded and cannot be clearly seen. There is no way to determine the actual
13 dimensions of the space. The International Access Symbol was so faded and worn
14 it cannot be clearly seen. ADA 2010 §§502.3.3, 502.6; 2022 CBC 11B-502.3.3,
15 11B 502.6; 11B-108.

16 22. The parking space has no adjacent access aisle, nor any paint stating
17 “No Parking.” ADA 2010 §502.3.3; 2022 CBC 11B-502.3.3.

18 23. There is also no sign in a conspicuous place at the entrance to the
19 facility, or immediately adjacent to on-site accessible parking and visible from
20 each parking space, stating that vehicles parked in designated accessible spaces not
21 displaying a disabled placard or license plate will be towed. 2022 CBC 11B-502.8.

22 24. A photo taken on the day of Plaintiff’s visit which shows one or more
23 of these violations is below.

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25. Plaintiff personally encountered these barriers.

26. These inaccessible conditions denied Plaintiff full and equal access and caused him difficulty, humiliation, and frustration.

27. The barriers existed during Plaintiff's visit to the Subject Property on July 12, 2023.

28. Plaintiff alleges that Defendants knew that the architectural barriers prevented equal access. Plaintiff further alleges that Defendants had actual or constructive knowledge that the architectural barriers prevented equal access, and that the noncompliance with the Americans with Disabilities Act and Title 24 of the California Building Code regarding accessible features was intentional.

29. Plaintiff intends to return to Defendants' public accommodation facilities in the near future. Plaintiff is currently deterred from returning because of

1 the knowledge of barriers to equal access that continue to exist at Defendants'
2 facilities that relate to Plaintiff's disabilities.

3 30. Defendants have failed to maintain in working and useable conditions
4 those features necessary to provide ready access to persons with disabilities. 28
5 C.F.R. §36.211(a).

6 31. Defendants have the financial resources to remove these barriers
7 without much expense or difficulty in order to make their property more accessible
8 to their mobility impaired customers. These barriers are readily achievable to
9 remove. The United States Department of Justice has identified that these types of
10 barriers are readily achievable to remove.

11 32. To date, Defendants refuse to remove these barriers, in violation of
12 the law, willfully depriving disabled persons including Plaintiff of important civil
13 rights.

14 33. On information and belief, the Plaintiff alleges that the Defendants'
15 failure to remove these barriers was intentional because the barriers are logical and
16 obvious. During all relevant times Defendants had authority, control and dominion
17 over these conditions and therefore the absence of accessible facilities was not a
18 mishap but rather an intentional act.

19 34. The barriers to access are listed above without prejudice to Plaintiff
20 citing additional barriers to access by an amended complaint after inspection by
21 Plaintiff's access consultant. *Oliver v. Ralphs Grocery Co.*, 654 F.3d 903 (9th Cir.
22 2011); *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9th Cir. 2008); *Chapman v. Pier*
23 *One Imports (USA), Inc.*, 631 F.3d 939 (9th Cir. 2011). All of these barriers to
24 access render the premises inaccessible to physically disabled persons who are
25 mobility impaired, such as Plaintiff, and are barriers Plaintiff may encounter when
26 he returns to the premises. All facilities must be brought into compliance with all
27 applicable federal and state code requirements, according to proof.

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FIRST CAUSE OF ACTION

Violation of the Americans With Disabilities Act of 1990

(42 U.S.C. §12101, *et seq.*)

(Against All Defendants)

35. Plaintiff alleges and incorporates by reference, as if fully set forth again herein, each and every allegation contained in all prior paragraphs of this complaint.

36. More than thirty years ago, the 101st United States Congress found that although “physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination...in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.” 42 U.S.C. §12101(a).

37. In 1990 Congress also found that “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals,” but that “the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.” 42 U.S.C. §12101(a).

38. In passing the Americans with Disabilities Act of 1990, which was signed into law by President George H. W. Bush on July 26, 1990 (hereinafter the “ADA”), Congress stated as its purpose:

“It is the purpose of this Act

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

1 (2) to provide clear, strong, consistent, enforceable standards
2 addressing discrimination against individuals with disabilities;

3 (3) to ensure that the Federal Government plays a central role in
4 enforcing the standards established in this Act on behalf of individuals
5 with disabilities; and

6 (4) to invoke the sweep of congressional authority, including the power
7 to enforce the fourteenth amendment and to regulate commerce, in
8 order to address the major areas of discrimination faced day to-day by
9 people with disabilities.”

9 42 USC §12101(b).

10 39. As part of the ADA, Congress passed “Title III – Public
11 Accommodations and Services Operated by Private Entities” (42 U.S.C. §12181 *et*
12 *seq.*). Title III of the ADA prohibits discrimination against any person “on the
13 basis of disability in the full and equal enjoyment of the goods, services, facilities,
14 privileges, advantages, or accommodations of any place of public accommodation
15 by any person who owns, leases (or leases to), or operates a place of public
16 accommodation.” 42 U.S.C. §12182(a).

17 40. The specific prohibitions against discrimination include, *inter alia*, the
18 following:

- 19 • 42 U.S.C. §12182(b)(1)(A)(ii): “Participation in Unequal Benefit. - It
20 shall be discriminatory to afford an individual or class of individuals,
21 on the basis of a disability or disabilities of such individual or class,
22 directly, or through contractual, licensing, or other arrangements, with
23 the opportunity to participate in or benefit from a good, service, facility,
24 privilege, advantage, or accommodation that is not equal to that
25 afforded to other individuals.”
- 26 • 42 U.S.C. §12182(b)(2)(A)(ii): “a failure to make reasonable
27 modifications in policies, practices, or procedures when such
28 modifications are necessary to afford such goods, services, facilities,
privileges, advantages, or accommodations to individuals with
disabilities....;”

- 42 U.S.C. §12182(b)(2)(A)(iii): “a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied service, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services...;”
- 42 U.S.C. §12182(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities... where such removal is readily achievable;”
- 42 U.S.C. §12182(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.”

41. Plaintiff is a qualified individual with a disability as defined in the Rehabilitation Act and in the Americans with Disabilities Act of 1990.

42. The acts and omissions of Defendants set forth herein were in violation of Plaintiff’s rights under the ADA and the regulations promulgated thereunder, 28 C.F.R. Part 36 *et seq.*

43. The removal of each of the physical and policy barriers complained of by Plaintiff as hereinabove alleged, were at all times herein mentioned “readily achievable” under the standards of §12181 and §12182 of the ADA. Removal of each and every one of the architectural and/or policy barriers complained of herein was already required under California law. Further, on information and belief, alterations, structural repairs or additions since January 26, 1993, have also independently triggered requirements for removal of barriers to access for disabled persons per §12183 of the ADA. In the event that removal of any barrier is found to be “not readily achievable,” Defendants still violated the ADA, per §12182(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages and accommodations through alternative methods that were “readily achievable.”

1 44. On information and belief, as of the date of Plaintiff's encounter at the
2 premises and as of the filing of this Complaint, Defendants' actions, policies, and
3 physical premises have denied and continue to deny full and equal access to
4 Plaintiff and to other mobility disabled persons in other respects, which violate
5 Plaintiff's right to full and equal access and which discriminate against Plaintiff on
6 the basis of his disabilities, thus wrongfully denying to Plaintiff the full and equal
7 enjoyment of the goods, services, facilities, privileges, advantages and
8 accommodations, in violation of 42 U.S.C. §12182 and §12183 of the ADA.

9 45. Defendants' actions continue to deny Plaintiff's rights to full and
10 equal access and discriminated and continue to discriminate against him on the
11 basis of his disabilities, thus wrongfully denying to Plaintiff the full and equal
12 enjoyment of Defendants' goods, services, facilities, privileges, advantages and
13 accommodations, in violation of the ADA, 42 U.S.C. §12182.

14 46. Further, each and every violation of the Americans With Disabilities
15 Act of 1990 also constitutes a separate and distinct violation of California Civil
16 Code §51(f), §52, §54(c) and §54.1(d), thus independently justifying an award of
17 damages and injunctive relief pursuant to California law, including but not limited
18 to Civil Code §54.3 and §55.

19 **SECOND CAUSE OF ACTION**

20 Violation of the Unruh Civil Rights Act

21 (California Civil Code §51, *et seq.*)

22 (Against All Defendants)

23 47. Plaintiff alleges and incorporates by reference, as if fully set forth
24 again herein, each and every allegation contained in all prior paragraphs of this
25 complaint.

26 48. California Civil Code §51 provides that physically disabled persons
27 are free and equal citizens of the state, regardless of their medical condition or
28 disability:

1 All persons within the jurisdiction of this state are free and equal, and
2 no matter what their sex, race, color, religion, ancestry, national origin,
3 **disability, or medical condition** are entitled to full and equal
4 accommodations, advantages, facilities, privileges, or services in all
business establishments of every kind whatsoever.

5 California Civil Code §51(b) (emphasis added).

6 49. California Civil Code §51.5 also states, in part: “No business,
7 establishment of any kind whatsoever shall discriminate against...any person in
8 this state on account” of their disability.

9 50. California Civil Code §51(f) specifically incorporates (by reference)
10 an individual’s rights under the ADA into the Unruh Act.

11 51. California Civil Code §52 provides that the discrimination by
12 Defendants against Plaintiff on the basis of his disability constitutes a violation of
13 the general antidiscrimination provisions of §51 and §52.

14 52. Each of Defendants’ discriminatory acts or omissions constitutes a
15 separate and distinct violation of California Civil Code §52, which provides that:

16 Whoever denies, aids or incites a denial, or makes any discrimination
17 or distinction contrary to section 51, 51.5, or 51.6 is liable for each and
18 every offense for the actual damages, and any amount that may be
19 determined by a jury, or a court sitting without a jury, up to a maximum
20 of three times the amount of actual damage but in no case less than four
21 thousand dollars (\$4,000), and any attorney’s fees that may be
determined by the court in addition thereto, suffered by any person
denied the rights provided in Section 51, 51.5, or 51.6.

22 53. Any violation of the Americans with Disabilities Act of 1990
23 constitutes a violation of California Civil Code §51(f), thus independently
24 justifying an award of damages and injunctive relief pursuant to California law,
25 including Civil Code §52. Per Civil Code §51(f), “A violation of the right of any
26 individual under the Americans with Disabilities Act of 1990 (Public Law 101-
27 336) shall also constitute a violation of this section.”
28

1 54. The actions and omissions of Defendants as herein alleged constitute a
2 denial of access to and use of the described public facilities by physically disabled
3 persons within the meaning of California Civil Code §51 and §52.

4 55. As a proximate result of Defendants' action and omissions,
5 Defendants have discriminated against Plaintiff in violation of Civil Code §51 and
6 §52, and are responsible for statutory, compensatory and actual damages to
7 Plaintiff, according to proof.

8 **PRAYER FOR RELIEF**

9 Plaintiff has no adequate remedy at law to redress the wrongs suffered as set
10 forth in this Complaint. Plaintiff has suffered and will continue to suffer
11 irreparable injury as a result of the unlawful acts, omissions, policies, and
12 practices of the Defendants as alleged herein, unless Plaintiff is granted the relief
13 he requests. Plaintiff and Defendants have an actual controversy and opposing
14 legal positions as to Defendants' violations of the laws of the United States and
15 the State of California.

16 The need for relief is critical because the civil rights at issue are paramount
17 under the laws of the United States of America and the State of California.

18 WHEREFORE, Plaintiff prays judgment against Defendants, and each of
19 them, as follows:

20 1. Issue a preliminary and permanent injunction directing
21 Defendants as current owners, operators, lessors, and/or lessees of the
22 Subject Property and premises to modify the above described property,
23 premises, policies and related facilities to provide full and equal access
24 to all persons, including persons with physical disabilities; and issue a
25 preliminary and permanent injunction pursuant to ADA §12188(a) and
26 state law directing Defendants to provide facilities and services usable
27 by Plaintiff and similarly situated persons with disabilities, and which
28 provide full and equal access, as required by law, and to maintain such

1 accessible facilities once they are provided; to cease any discriminatory
2 policies; and to train Defendants' employees and agents how to
3 recognize disabled persons and accommodate their rights and needs;

4 2. Retain jurisdiction over the Defendants until such time as
5 the Court is satisfied that Defendants' unlawful policies, practices, acts
6 and omissions, and maintenance of physically inaccessible public
7 facilities and policies as complained of herein no longer occur, and
8 cannot recur;

9 3. Award to Plaintiff all appropriate damages, including but
10 not limited to actual and statutory damages according to proof;

11 4. Award to Plaintiff all reasonable attorney fees, litigation
12 expenses, and costs of this proceeding pursuant to 42 U.S.C §12205 and
13 California Civil Code §52; and

14 5. Grant such other and further relief as this Court may deem
15 just and proper.

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17 DATED: July 29, 2023

VALENTI LAW APC

18
19 By: /s/ Matt Valenti

20 Matt Valenti, Esq.
21 Attorney for Plaintiff
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JURY DEMAND

Plaintiff hereby demands a trial by jury for all claims and issues for which a jury is permitted.

DATED: July 29, 2023

VALENTI LAW APC

By: /s/ Matt Valenti

Matt Valenti, Esq.
Attorney for Plaintiff